

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JEROME LAMAR YOUNG,

Civ. No. 19-14352 (NLH)

Petitioner,

MEMORANDUM OPINION & ORDER

v.

JOHN POWELL,

Respondent.

APPEARANCES:

Jerome Lamar Young
1222138/212953-C
South Woods State Prison
215 South Burlington Road
Bridgeton, NJ 08302

Petitioner Pro Se

HILLMAN, District Judge

WHEREAS, Petitioner Jerome Lamar Young filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, see ECF No. 1; and

WHEREAS, Petitioner indicates he is currently serving a sentence imposed by the Bridgeton Joint Municipal Court, see id. at 1; and

WHEREAS, "a state prisoner challenging the validity or execution of his state court sentence must rely on the more specific provisions of [28 U.S.C.] § 2254 rather than § 2241."

Washington v. Sobina, 509 F.3d 613, 619 n.5 (3d Cir. 2007).

Section 2254 grants federal courts jurisdiction to "entertain an

application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); and

WHEREAS, this Court notified Petitioner of the legal consequences of characterizing his application as a petition for writ of habeas corpus under § 2254 and advised him of his options pursuant to Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000), on February 13, 2020, ECF No. 7; and

WHEREAS, Petitioner has not submitted a written statement to the Court within the timeframe set by the Court in its February 13, 2020 order. Therefore in accordance of the terms of that Order, the Court construes Petitioner's submission as a petition for writ of habeas corpus under 28 U.S.C. § 2254; and

WHEREAS, a district court may not grant a writ of habeas corpus under 28 U.S.C. § 2254 unless the applicant has exhausted the remedies available in the courts of the State or exhaustion is excused under 28 U.S.C. § 2254(b)(1)(B) because there is an absence of available State corrective process or circumstances exist that render such process ineffective to protect the rights of the applicant. See Henderson v. Frank, 155 F. 3d 159, 164 (3d Cir. 1998); Lambert v. Blackwell, 134 F.3d 506, 513 (3d Cir. 1997); Toulson v. Beyer, 987 F.2d 984 (3d Cir. 1993).

Exhaustion requires a petitioner challenging a New Jersey conviction under § 2254 to have fairly presented each federal ground raised in the petition to all levels of New Jersey courts, including the New Jersey Supreme Court. See O'Sullivan v. Boerckel, 526 U.S. 838 (1999); Rose v. Lundy, 455 U.S. 509 (1982). Unexhausted petitions are subject to dismissal, Rhines v. Weber, 544 U.S. 269 (2005);

WHEREAS, Petitioner's sentence is from the Bridgeton Joint Municipal Court, ECF No. 1 at 1. In New Jersey, defendants convicted in municipal court are entitled to de novo review in the New Jersey Superior Court, Law Division. N.J. Ct. R. 3:23-1. Defendants may also have their convictions reviewed by the Appellate Division if they are unsuccessful in the Law Division. State v. McLendon, 751 A.2d 148 (N.J. Super. Ct. App. Div. 2000); and

WHEREAS, Petitioner states he has not appealed his conviction because "I do not recognize any other legal or lawful remedy outside of the Writ of Habeas Corpus for Unknown Sentencing and Constitutional Violations, or Lawless Violence." ECF No. 1 at 4,

THEREFORE, IT IS on this 28th day of April, 2020 ORDERED that the Clerk shall recharacterize this petition as a petition for writ of habeas corpus under 28 U.S.C. § 2254 pursuant to the terms of the Court's February 13, 2020 order;

and it is further

ORDERED that Petitioner shall show cause within forty-five days from the date of this Order why the petition should not be dismissed as unexhausted, Rhines v. Weber, 544 U.S. 269 (2005); and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order on Petitioner by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.